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COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS **SUPERIOR COURT**

UNITED STEELWORKERS, LOCAL 9517, AFL-CIO
Plaintiff

v. **CASE NO. 2073CV00374**

TOWN OF SEEKONK
Defendant

Consolidated with:

TOWN OF SEEKONK
Plaintiff

v. **CASE NO. 2073CV00414**

UNITED STEELWORKERS, LOCAL 9517, AFL-CIO
Defendant

DECISION AND ORDER ON MOTION OF UNITED STEELWORKERS, LOCAL 9517, AFL-CIO FOR JUDGMENT ON THE PLEADINGS
AND
TOWN OF SEEKONK'S CROSS-MOTION FOR JUDGMENT ON THE PLEADINGS

United Steelworkers, Local 9517, AFL-CIO ("the Union") motions the court for judgment under Mass. R. Civ. P. 12(c) to confirm an Arbitration Award pursuant to G.L. c. 150C, §10 as no grounds exist to vacate or modify the award pursuant to G.L. c. 150C, §§ 11 or 12.

The Town of Seekonk ("the Town") filed a cross-motion for judgment under Mass. R. Civ. P. 12(c) to vacate the Arbitration Award pursuant to G.L. c.150C, §11, as the Arbitrator exceeded her authority by failing to define the contractual disciplinary standard of "good cause"

and substituted her own requirements not found in the language of the collective bargaining agreement, and that the Arbitration Award violates public policy.

BACKGROUND

Briefly summarized, this matter concerns [redacted], whom the Town employed as the [redacted]. [redacted] was a full-time employee, working thirty-five hours per week, whose conditions of employment were governed by a collective bargaining agreement between the Town and Union ("CBA"). At the time of this dispute, [redacted]. The Town had a policy regarding comp time that allowed [redacted] to claim comp time for evening work. On or about March, 2018, the Town changed its policy to require employees to reduce their work hours during the scheduled work week by the number of hours spent working in the evenings in lieu of comp time. Pursuant to the CBA, [redacted] filed a grievance alleging that the CBA provided for overtime and/or comp time when she worked in the evening.

The grievance procedure proceeded pursuant to the CBA, Article V, Grievance and Arbitration Procedure, but the subject matter of the proceedings re-focused on [redacted]s timesheets. In preparation for a grievance hearing, the Town Administrator reviewed two weeks of [redacted]'s timesheets and video that recorded her arrival and departure times. The Town Administrator concluded that [redacted] submitted time sheets that did not accurately reflect the hours she had worked.[1] The Town Administrator asked [redacted] at a grievance hearing on May 30, 2019, if she had actually worked thirty-five hours during a week that she was claiming comp time and she answered that she had. When confronted with the video showing otherwise, [redacted]

[1] The Arbitrator's decision concluded that the Town had ultimately proved, through further investigation of timesheets and video, that [redacted] had submitted inaccurate timesheets over a seven week period resulting in over-payment of approximately fourteen hours that she did not work.

did not dispute what the video showed. The Town Administrator informed [redacted] that he intended to recommend discharge and for the Town to press criminal charges against her for theft. After the Town Administrator gave [redacted] fifteen minutes to consult with a Union representative, [redacted] asked that she be suspended and offered to pay restitution. Instead, on June 12, 2019, the Board of Selectmen voted to discharge [redacted]. On June 14, 2019, the Town Administrator issued a Notice of Termination of Employment. Thereafter, the Union requested arbitration pursuant to the CBA. The Arbitrator heard evidence and issued a decision on May 26, 2020.

The Arbitrator's decision discussed the distinction between "just cause" and "good cause" and concluded "[w]hether a 'good cause' or 'just cause' standard applies, an employer still has the burden of proving that the employee was guilty of the charges against them. This is particularly true when the discharge is for moral turpitude (dishonesty and falsification of timesheets, in this case), which severely limits the employee's chances of being re-employed elsewhere." The Arbitrator went on to explain that in this case, based on the facts, "[t]he Town proved that [redacted] provided inaccurate information during an interview and on her timesheets, but these were not the reasons she was discharged. The Town insists that [redacted] was discharged because she intentionally made false statements during an interview and she deliberately and intentionally falsified her timesheets and then knowingly received payment for hours she had not worked."

The Arbitrator considered the following:

-The timesheets were pre-printed and had designated starting and end times. The employees were asked to sign the pre-printed and pre-certified timesheets for payment.

[redacted] explained that she had not kept careful records and became increasingly casual about her schedule and was more concerned about reporting total numbers for paid leave or hours worked than she was about the pre-printed start and end times on the timesheets.

[redacted] understood her starting time to be 8:30 a.m. Monday through Friday, even though the pre-printed timesheets showed earlier starting times. [redacted]'s average arrival time was 8:36 a.m.

[redacted] denied any effort to deceive anyone and advised the Town Administrator and the Board of Selectmen that her supervisor, who was also the Department Head ("Supervisor"), was aware of her actions.

[redacted]'s Supervisor reviewed and signed her timesheets to authorize the Town Treasurer to pay [redacted].

Despite these enumerated facts, the Town never produced any evidence that they asked [redacted]'s Supervisor, who worked in close proximity to [redacted], about [redacted]'s assigned schedules and/or inaccuracies in her timesheets. Nor did the Town produce evidence that they asked [redacted]'s Supervisor about the charge that [redacted] intentionally filed inaccurate timesheets or intentionally made inaccurate statements to the Town Administrator at the May 30, 2019 grievance hearing, in which the Supervisor was in attendance.

Additionally, although the Town maintained that the policy for comp time had changed in March 2018, [redacted] continued to submit timesheets with comp time, which were signed by her Supervisor and paid by the Town Treasurer, until May 2019.[2]

[2] These procedures were apparently maintained despite the Town Administrator's position that he had informed all Department Heads of the policy change. The Arbitrator noted that this evidence regarding how the Town handled comp time and a lack of training on how to properly complete timesheets may have contributed to [redacted]'s lackadaisical approach to completing timesheets.

The Arbitrator considered [redacted]'s "clear and affirmative defense" that her Supervisor was aware of her comings and goings, and as a result drew an adverse inference against the Town for its failure to explain why it did not interview [redacted]'s Supervisor or call him as a witness regarding their challenge to [redacted]'s credibility, when the Supervisor had direct knowledge of [redacted]'s performance, comings and goings at the office, and knowledge of tardiness when he reviewed and signed [redacted]'s timesheets.

Based on the above facts, without limitation to any other factual considerations discussed in the Arbitrator's decision, the Arbitrator concluded that the Town proved that [redacted]'s submission of timesheets that did not accurately reflect the hours she worked, and her inaccurate statements about the hours she worked at the May 30, 2019 meeting, were "negligent due to extreme carelessness and a failure to exercise due regard for the employer's operations" which "warrants discipline, despite an otherwise clean disciplinary record." However, the Arbitrator concluded that the Town did not prove intentional and/or deliberate conduct by [redacted] in filing the timesheets or in her statements made regarding the hours she worked.

Accordingly, the Arbitrator ordered the Town to rescind [redacted]'s discharge and remove all references to it from [redacted]'s personnel record. The Arbitrator suspended [redacted]'s employment for thirty days without pay from June 14, 2019 through July 14, 2019, and ordered the Town to reinstate [redacted] and make her whole for all wages and benefits lost since July 15, 2019, less interim earnings or income she would not have received but for the wrongful discharge.

For the reasons outlined in this decision, the Arbitration Award does not exceed the Arbitrator's authority by failing to define good cause, and the Arbitration Award does not violate public policy when ordering discipline for negligent behavior.

DISCUSSION

I. Standard of Review

"After the pleadings are closed . . . any party may move for judgment on the pleadings." Mass. R. Civ. P. 12(c). A motion under Mass. R. Civ. P. 12(c) tests the legal sufficiency of the complaint, *Champa* v. *Weston Pub. Schs.*, 473 Mass. 86, 90 (2015), and the court accepts as true the well-pleaded facts alleged therein, *UBS Fin. Servs., Inc.* v. *Aliberti*, 483 Mass. 396, 405 (2019). In ruling on a motion for judgment on the pleadings, the court may consider documents attached to the complaint. *Merriam* v. *Demoulas Super Mkts., Inc.*, 464 Mass. 721, 723 (2013).

II. Arbitrator's Decision

Pursuant to G.L. c. 150C, § 10, "[u]pon application of a party, the superior court shall confirm an [arbitrator's] award, unless within the time limits, hereinafter imposed grounds are urged for vacating, modifying or correcting the award, in which case the court shall proceed as provided in sections eleven and twelve." General Laws c. 150C, § 11 (a)(3) provides that "[u]pon application of a party, the superior court shall vacate an award if . . . the arbitrator[ ] exceeded their power[ ] . . . ."

The court's review of the Arbitrator's award is extremely limited. *Bureau of Special Invests* v. *Coalition of Pub. Safety*, 430 Mass. 601, 603 (2000); *Plymouth-Carver Reg. Sch. Dist.* v. *J. Farmer & Co.*, 407 Mass. 1006, 1007 (1990). A "review of the underlying arbitration decision is considerably more deferential than even the abuse of discretion or clear error standards applied to lower court decisions. . . . Indeed, an arbitration award carries a presumption of propriety because it is the arbitrator's judgment, not necessarily an objectively correct answer, for which the parties have bargained." *Pittsfield* v. *Local 447 Int'l Bhd. of Police Officers*, 480 Mass. 634, 637-638 (2018) (internal citations omitted). See *Plymouth-Carver Reg. Sch. Dist.*,

407 Mass. at 1007 ("Absent fraud, errors of law or fact are not sufficient grounds to set aside an award."). However, a court may reverse an arbitrator's award where the arbitrator exceeded their authority by "disregarding the governing law." *School Comm. of Lowell* v. *Robishaw*, 456 Mass. 653, 662 (2010). See G.L. c. 150C, § 11 (a)(3).

Here, the relationship between [redacted] and the Town was governed by the CBA. "In accordance with the strong public policy favoring the arbitration of disputes, particularly in the context of collective bargaining agreements, . . . court[s generally] . . . follow[ ] the rule that the arbitrator's decision should be upheld." *Sheriff of Suffolk Cnty.* v. *Jail Officers and Emps. of Suffolk Cnty.*, 451 Mass. 698, 700 (2008). The CBA provided that the decision to terminate an employee "shall be for good cause." However, the CBA does not define "good cause."

While the Arbitrator did not define "good cause," she interpreted that phrase to require the Town to prove [redacted] acted intentionally and/or deliberately to warrant her termination.[3] She determined that the Town failed to prove that [redacted] acted intentionally or deliberately, but only that [redacted] acted negligently. Given the broad discretion the court grants to an arbitrator's decision-making authority and an arbitrator's interpretation of a collective bargaining agreement, the court must yield to her interpretation of the CBA and application of the facts as she found them. See *Commissioners of Middlesex Cnty.* v. *American Fed'n of State, Cnty. & Mun. Emps., AFL-CIO, Local 414*, 372 Mass 466, 467-468 (1977) (where arbitrator's decision was not based on fraud or bad faith, no basis to overturn decision to reinstate employees who were initially dismissed for punching out without permission before completing work). See also *Concerned Minority Educators* v. *School Comm. of Worcester*, 392 Mass. 184, 187-188 (1984) (court has "no business overruling an arbitrator because [the court] give[s] a contract a different

[3] The Arbitrator stated this would be true whether she applied a "good cause" or "just cause" review.

interpretation"); *Sheriff of Suffolk Cnty.* v. *AFSCME Council 93, Local 419*, 67 Mass. App. Ct. 702, 706 (2006) (arbitrator cannot ignore contract's plain words, but where "there is room for doubt or interpretation on the question, then the issue properly lies within the broad authority conferred upon arbitrators of civil disputes").

The case of *School District of Beverly* v. *Geller*, 435 Mass. 223 (2001), relied upon by the Town in its cross-motion, is not to the contrary. In *Geller*, the Court determined that the arbitrator exceeded his authority by reinstating a teacher after the school district dismissed him for serious misconduct when he used physical force, on three separate occasions, against students. *Id.* at 226, 235 (Cordy, J., concurring). However, unlike in *Geller* where the source of the arbitrator's authority derived from statute, see G.L. c. 71, § 42, here no overriding statute applies; instead, the CBA governs. Contrast 435 Mass. at 235 (Cordy, J., concurring) ("arbitrator erroneously applied a further just cause analysis to misconduct that was both enumerated in the statute as a proper basis for discharge and proved by the district").

Accordingly, the Arbitrator did not exceed her authority and her decision must be upheld.

III. Public Policy

A court must proceed with caution in overruling an arbitrator's award on the ground that it conflicts with public policy. *Pittsfield*, 480 Mass. at 639, citing *Bureau of Special Invests*, 430 Mass. at 604. In determining whether upholding the public policy exception applies, the court relies on the following three-part analysis:

> First, the policy at issue must be well defined and dominant, and is to be ascertained by reference to the laws and legal precedents and not from general considerations of supposed public interests. . . . Second, the exception must not merely address disfavored conduct[ ] in the abstract but must target disfavored conduct which is integral to the performance of employment duties. . . . Third, [the court] inquire[s] whether an award reinstating the employee violates public policy.

Pittsfield, 480 Mass. at 639-640 (internal quotation marks, modifiers, and citations omitted). As the Town seeks to vacate the Arbitrator's award, it carries the burden to show the award satisfies each prong. *Id.* at 640.

As to the first element, the Town argues that the "efficient and legitimate expense of public funds for the provision of public services is a central function of municipal entities." However, the Town failed to identify any statute or precedent establishing a public policy concerning the negligent falsification of timesheets by a public employee.[4] Contrast *Pittsfield*, 480 Mass. at 639-640 (strong public policy in terminating police officer for lying); *Bureau of Special Invests*, 430 Mass. at 605 (well-defined public policy protecting tax information against unauthorized access); *Springfield* v. *United Pub. Serv. Emps. Union*, 89 Mass. App. Ct. 255, 259 (2016) (strong, well-defined public policy disfavoring sexual harassment). The case of *Panico* v. *Boston Hous. Auth.*, 7 MCSR 62, 63-64 (1994) does not state to the contrary as that case concerned a terminated municipal employee who intentionally credited himself for unearned time after his manager reviewed his time sheets. Here, the arbitrator determined that [redacted] engaged in negligent conduct.[5] Therefore, since the Town only provided "general considerations of supposed public interests," *Pittsfield*, 480 Mass. at 639, its public policy argument fails.

Even if the Town had established a well-defined and dominant public policy, the Town failed to satisfy the second prong of the public policy analysis as well. The Town failed to raise any argument providing how [redacted]'s negligent filing of time sheets was integral to her position

[4] At the hearing, the Town's counsel relied on G.L. c. 268, § 23(b)(4). However, G.L. c. 268, § 23, which concerns an officer's refusal to execute process, is not applicable to this action.

[5] The defendant also argues, citing to *Town of Duxbury* v. *Duxbury Firefighters Ass'n*, 50 Mass. App. Ct. 461, 465 (2000), that there is a clearly defined public policy against "windfall" payments to "protect the public treasury from unwarranted money payments." However, the quoted language concerns the accrual of benefits for a public employee during injured-on-leave duty under G.L. c. 41, § 111F ("Leave Without Loss of Pay for Certain Incapacitated Police Officers and Fire Fighters; Indemnification of Cities, Towns, Fire and Water Districts"). *Id.* at 462.

as [redacted]. Contrast *Geller*, 435 Mass. at 238-239 (Ireland, J., concurring in result) (teacher's misconduct for physical confrontation with students went to teacher's responsibility of maintaining safe environment); *Springfield*, 89 Mass. App. Ct. at 259 (second element satisfied where defendant's role as messenger amongst city employees connected to his making inappropriate comments).

Furthermore, as to the third prong, the Arbitrator's award does not violate public policy. The "third prong is not whether the employee's behavior violates public policy, but whether an award reinstating . . . [redacted] does so." *Boston* v. *Boston Police Patrolmen's Ass'n*, 477 Mass. 434, 442-443 (2017). Here, the Town argues that the Arbitrator's award to reinstate [redacted] signals that her conduct was excusable. However, the Town mischaracterizes the Arbitrator's award. While it is true that the Arbitrator reinstated [redacted] and required the Town to provide her backpay for lost wages, she did not go unpunished — [redacted] received a thirty-day suspension without pay for her conduct. See *Springfield*, 89 Mass. App. Ct. at 260 ("It was within the arbitrator's ample authority to conclude that . . . progressive discipline rather than termination [was] an appropriate remedy."). Therefore, this is not a case where reinstatement violated public policy. Contrast *Pittsfield*, 480 Mass. at 644 (where officer terminated for false statements violating statute, arbitration award finding no just cause for dismissal and instructing reinstatement violated public policy); *Massachusetts Bay Transp. Auth.* v. *Boston Carmen's Union, Local 589*, 454 Mass. 19, 29-30 (2009) (arbitrator's award to remove retroactive seniority status of individual who won settlement as result of discrimination suit violated public policy because it "effectively perpetuate[d] the MBTA's likely discriminatory conduct" and deprived him of remedy).

Accordingly, since the Town failed to satisfy all three elements for overturning the Arbitrator's award on the ground that it conflicts with public policy, the Arbitrator's award must stand.

IV. Fees under G. L. c. 231, § 6F

The Union moves for costs and fees pursuant to G. L. c. 231, § 6F, arguing that the Town's motion was frivolous. The court disagrees. In relevant part, G. L. c. 231, § 6F, provides that "[u]pon motion of any party in any civil action in which a[n] . . . order or judgment has been made . . . the court may determine, after a hearing, as a separate and distinct finding, that all or substantially all of the claims, defenses, [and] setoffs . . . were wholly insubstantial, frivolous and not advanced in good faith." Here, no need exists for the court to hold an additional hearing. While the court's review of the Arbitrator's decision is limited, the questions raised by the Town were the appropriate subject of judicial review. See *Bureau of Special Invests*, 430 Mass. at 603 (question of public policy for courts, not arbitrators); *Triton Reg. Dist. Sch. Comm.* v. *Triton Teachers Assoc.*, 7 Mass. App. Ct. 873, 874 (1979) (whether arbitrator exceeded authority "always open for judicial review").

ORDER

The United Steel Workers, Local 9517, AFL-CIO's Motion for Judgment on the Pleadings is **ALLOWED** and the Arbitrator Award is **CONFIRMED**. The Town of Seekonk's Cross-Motion for Judgment on the Pleadings is **DENIED**.

Merita Hopkins
Justice of the Superior Court

DATED: May 20, 2021